IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3425 of 2005
Date of decision: December 04, 2006.

Harjasdeep Singh

...**Petitioner(s)**

v.

Sukhdev Singh & Ors.

...**Respondent(s)**

Present: Shri J.S. Brar, Advocate for the petitioner.

Shri Sanjeev Kumar Arora, Advocate for respondent No.1.

Surya Kant, J. (Oral)

This revision petition is directed against the order dated 10th June, 2005 passed by the learned Additional District Judge, Faridkot whereby the petitioner (Harjasdeep Singh) has been restrained from interfering in the peaceful possession of respondent-defendant No.1 (Sukhdev Singh) from the subject land till the decision of the civil suit.

[2]. Briefly, the facts may be noticed.

[3]. Respondent-defendant No.1 was owner in possession of land measuring 48 kanals. He allegedly executed a registered sale deed on 26th August, 2004 in favour of the petitioner in respect of 23 kanals of land. It is recited in the sale deed that possession of the land has been delivered to the petitioner. In respect of the remaining land, i.e. 25 kanals, he is alleged to have entered into an agreement to sell with the petitioner and respondent No.2 (Bhupinder Singh) on 20th June, 2002. On the strength of the said agreement to sell, the petitioner has filed a suit for possession by way of

specific performance which is still pending.

[4]. In the above stated civil suit, respondent-defendant No.1 has raised a counter-claim challenging the validity of the sale deed dated 26th August, 2004 as well as of the agreement to sell dated 20th June, 2002. The petitioner/plaintiff and respondent-defendant No.1, both, moved applications under Order 39 Rule 1 and 2 CPC in the pending suit. While the petitioner sought an injunction against respondent-defendant No.1 to restrain him from alienating the land which is the subject matter of the agreement to sell dated 20th June, 2002, the respondent-defendant No.1 sought an injunction to restrain the petitioner from interfering in his possession over the said land.

[5]. The learned trial court vide its order dated 9.12.2004 dismissed both the applications.

[6]. The respondent-defendant No.1 preferred an appeal against the above stated order which has since been allowed by the learned Additional District Judge vide his impugned order dated 10th June, 2005. Pertinently, while allowing the appeal, the learned first appellate court has restrained the petitioner (plaintiff) from interfering in possession of the respondent-defendant No.1 in respect of the entire land measuring 48 kanals, i.e. including the land sold by the sale deed 26th August, 2004.

[7]. Aggrieved, the plaintiff-plaintiff has filed this revision petition.

[8]. I have heard Learned Counsel for the parties and perused the impugned orders.

[9]. As may be noticed from the pleadings, the impugned orders and the arguments raised at Bar, the respondent-defendant No.1 has seriously disputed the genuineness of the sale deed as also the agreement to sell in question. According to him, no sale consideration was actually paid to him

and the documents have been allegedly manipulated by the petitioner who is a commission agent.

[10]. Be that as it may, these issues are to be gone into by the learned trial court on the basis of evidence and it is not desirable or expedient to express any opinion at this stage in relation thereto.

[11]. The question, however, arises that if the respondent-defendant No.1 fails to prove his allegations and/or the documents in dispute are finally proved to be genuine, how the interest of the petitioner should be safeguarded till the suit is decided on merits. In other words, the respondent-defendant No.1 has been allowed to retain and enjoy the possession of the subject land without any pre-condition to suitably compensate the petitioner even if his counter-claim falls flat. No equitable relief can be granted to a party at the cost of lawful right of the other.

[12]. Consequently, the impugned order dated 10th June, 2005 passed by the learned first appellate court is liable to modified so as to strike balance between the two competing claims. The revision petition is accordingly accepted and the impugned order dated 10th June, 2005 passed by the learned Additional District Judge, Faridkot is modified to the extent that the respondent-defendant No.1 is directed to furnish adequate security for mesne profits @ Rs.60,000/- per year to the satisfaction of the learned trial court within a period of one month from today. The security for mesne profits shall be furnished by respondent-defendant No.1 from the year 2002 onwards so that if the petitioner's claim based upon the sale deed dated 26th August, 2004 and/or the agreement to sell dated 20th June, 2002 is finally accepted, he can be suitably compensated for the interregnum period during which possession of the subject land has been allowed to be retained by respondent-defendant No.1 under the orders passed by the learned first

appellate court.

[13]. However, it is made clear that in case the adequate security, as directed above, is not furnished by the respondent-defendant No.1 within the stipulated period, the injunction order passed by the first appellate court in his favour shall be deemed to have been vacated.

[14]. The observations made here-in-above are tentative in nature and shall have no bearing on the merits of the civil suit/counter-claim.

[15]. Disposed of.

December 04, 2006. [**Surya Kant**]
kadyan **Judge**